



Public Participation in the EU's Sustainability Impact Assessments of Trade Agreements

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Introduction

International trade is a policy area that frequently sparks suspicions of illegitimacy. This is as a result of its traditional dependence on delegation, executive authority and technicality. However, accompanying the shift in focus of international trade policy from traditional trade barriers to new types of non-tariff barriers that have major impacts on sensitive issues such as food safety, environmental protection and health, the participation of civil society becomes even more important. This discussion has not only led to intensive research activities in this area, but has also recently provided the impetus for employing Sustainability Impact Assessments (SIAs) to allow for an *ex ante* evaluation of potential negative impacts of trade agreements (see Elwell 2002 for US and Canadian experiences). In the European Union, an SIA program was launched in 1999 by DG Trade and former Trade Commissioner Pascal Lamy, who was interested in applying the SIA process to all major policy initiatives. Ever since, a substantial share of DG Trade's budget is dedicated to SIAs, thus showing the prominent role given to SIAs by the European Commission. The assessments are usually carried out in several stages. In the planning stage, the SIA is launched and contents are defined whereas during the following screening and scoping phases trade measures to be assessed are selected along with indicators, significance criteria and country case studies, as well as evaluation methods. The actual assessment is then carried out analytically and empirically, employing models and case studies. This technical analysis allows for the assessment of possible flanking measures. In some cases the SIA is complemented by a follow-up study, including subsequent monitoring and an *ex post* evaluation that allows for a direct comparison of projected outcomes and the actual results.

Generally, impact assessments do not represent new procedures, and there exists a broad base of knowledge and expertise on how to assess the potential effects of projects, specifically in the environmental arena. The objectives of impact assessments are to effectively recognize potential negative effects and form adequate measures for mitigating such effects. However, using SIAs to integrate sustainability concerns into trade policy represents new research, causal-chain analysis, timing and legitimacy challenges. More effective integration of civil society into these processes and procedures is also to be addressed. This article addresses the question of how to improve the quality and legitimacy of SIAs by strengthening stakeholder participation. It starts with a short review of the benefits and costs of public participation in impact assessments and then identifies and analyses major challenges and obstacles to . In particular, the selection of stakeholders and the structure of participation in the different phases and stages are assessed. The article raises the question of whether, in the area of trade, a more decentralized approach to SIAs might be more effective. It concludes by making a number of suggestions regarding improvements to the SIA processes involving the increase of civil society participation.

Benefits and Costs of Participation

Stakeholder participation entails considerable costs as well as benefits. This is particularly true for trade agreements, given the complexity of impacts that trade

measures (Dalal-Clayton and Bass 2002, pp. 193–195), as areas affected by international trade nowadays range from water services, agriculture and food security and environmental standards to intellectual property rights. Costs and benefits of stakeholder participation raise the question of what levels of participation are important at different SIA stages. In terms of benefits, the additional knowledge and expertise that can be obtained through greater involvement of stakeholders is most important. Not only do stakeholders add further perspectives, but there are also thematic areas where it is widely acknowledged that local stakeholders alone are in the position to provide the knowledge and expertise necessary to integrate these issues into trade policy (OECD 2001).

However, stakeholder participation is not only crucial for creating a sufficiently broad knowledge base, but also for ensuring that SIAs are perceived as legitimate (UNEP 2001, p. 17). Generally, transparent assessment processes and the involvement of interested parties contribute to building reciprocal trust between experts and stakeholders and improve the commitment to the process as well as the final strategy, thus facilitating its implementation. Again, this is especially important in the area of trade, where technical language and detailed knowledge tend to make involvement inaccessible for non-experts, and decision-making processes and negotiations are often accused of lacking transparency. In this respect, encouraging debate among experts and stakeholders is expected to lead to a better understanding of the different points of view. Costs and benefits need to be taken into account when thinking about the best way to plan effective participation processes. Participation processes impose costs on those seeking input from participants as well as stakeholders. These costs include the effort of recognizing and inviting stakeholders, time needed for consultations, direct costs, printing and disseminating information. All these costs may limit participation or cause a bias in the range of stakeholders who are able to participate.

To better gauge the benefits of their activities, it is essential for civil society groups to know about the relationship between SIAs and the trade negotiations whose potential impacts are being analyzed. The criticism has been made that the effect of SIAs on negotiating positions and negotiation outcomes is unclear, and that it might actually be insignificant. Consequently, SIAs are frequently perceived as green wash, or as a superfluous bureaucratic exercise (Joint NGO Statement 2000). If this is the case, stakeholders should not devote their often-limited resources to taking part. In order to justify public participation in the SIA process, a stronger link needs to be made between the assessments and the negotiations. A starting point could be requiring negotiators to report on how their positions relate to the SIA, and on whether and how the progress of the negotiations was influenced by those positions. Another option might be the involvement of stakeholders themselves in the negotiating process, which would allow them to contribute to the decision-making process more directly and exercise control over the way the SIA is used and implemented. Furthermore, the SIAs results could be released before the end of negotiations.

Selection of Stakeholders and Related Issues

A broad participation and a representative selection of stakeholders should be one goal. Representatives of "the public" and appropriate stakeholders (who represent civil society) remain unidentified. First, in terms of political legitimacy, it is fundamental that the SIA addresses concerns of those affected by the trade measures. Here, a number of groups, including women, indigenous people and ethnic minorities, are frequently under-represented. Second, stakeholders representing societal interests and with a higher degree of organization are key to the inclusion of a broader knowledge base. Among these key groups, developmental, social and environmental NGOs and other public interest groups play an important role. Third, the inclusion of relevant experts and review by the scientific community, including research institutions and academia, is necessary in order to ensure the use of authoritative information as well as the scientific credibility of the assessment.

It should be kept in mind that stakeholders may differ in their ability to actively participate and contribute to the process since SIAs are complex projects requiring technical knowledge and expertise. Thus, capacity building among stakeholders might be a prerequisite for their successful participation in many cases.

Apart from the required knowledge and expertise, participation can also be costly in terms of time for preparation and participation in meetings, travel costs, as well as the creation and dissemination of information material. In order to level the playing field between all participants in SIAs, it might become necessary to financially support included stakeholders. As mentioned above, a broad range of stakeholders is a key factor for the success of SIA processes. However, there are two potential problems with regard to the selection of participants that need to be addressed. The growing number of stakeholders wanting to participate would pose time and resource constraints on the convenor, as it becomes difficult to integrate high levels of input. At the same time, an excessive number of participants in open meetings or discussions might result in inertia, making consensus a possibility. In the European Union, these problems may become even more significant following the accession of ten new Member States in May 2004. However, so far the civil society groups from Central and Eastern Europe did show only limited interest in participating in these consultations. Nevertheless, in future a possible response to a larger interest in the participation process might be to restrict the number of participants at certain events, and to encourage stakeholders to form smaller, internal, constituent networks.

Conversely, having too few interested stakeholders makes it more of a challenge to encourage participation and actively contact relevant stakeholder groups in order to ensure balanced and representative participation. It has been suggested that too little is generally known about SIAs, both among policymakers and stakeholders (WWF et al. 2002, p. 3). In order to raise awareness, the appropriate communication channels for disseminating useful information to the public need to be investigated. Reaching out to stakeholders by electronic means such as emails or newsletters has been proposed (PricewaterhouseCoopers 2003, p. 15).

As previously mentioned, the possibilities for participating in SIA consultations might also be negatively affected by a lack of resources. To ensure a more balanced presentation of stakeholders, civil society groups might need support to prepare and participate in the consultation processes (OECD 1999). DG Trade already covers some travel expenses of participants in dialogue with civil society in Brussels (European Commission 2002a). A similar system could be adopted, and maybe extended, to encourage more participation in the SIA consultation process.

The provision of financial support then raises the question of what is required from stakeholders to qualify for support, and how equal treatment of different actor groups can be ensured. So far there are no clear rules in place for classifying potential participant NGOs according to their potential input or financial needs.

As international trade takes place between importing and exporting countries, the question arises as to which civil society groups from developing countries should participate in the SIAs. For example, the European Commission's SIAs of trade negotiations usually include assessments of impacts on the countries of the trading partners. The lack of involvement of non-EU countries has been repeatedly pointed out and criticized by NGOs (WWF et al. 2002, p. 46). While in some cases local groups in developing countries may not even be aware of SIAs taking place, in other instances, they will often lack financial and personnel resources to contribute actively and attend meetings.

Some degree of decentralization will be essential for courses of action where participation by civil society representatives from developing countries is considered necessary. As seen in the SIA on the negotiations between ACP countries and the EU, meetings in the respective regions are imperative. Correspondingly, reports might have to be published in languages other than English to enable the participation of actors from the region. A Spanish version of the final report on the EU–Chile negotiations was requested by stakeholders to allow the Chilean fishing communities to participate in the SIA. The consortium conducting the study did not respond to this demand, claiming that the translation was not part of terms of the contract with the European Commission (Plaints 2002). In general, more of the communication would have to be conducted in local languages. As for the lack of resources of stakeholder groups in developing countries, the question again arises as to whether and how the European Commission should make financial support available for participation and capacity building.

There are several positions in favor of more extensive participation in the SIA process by non-EU countries. Developing countries often perceive SIAs as biased towards environmental issues, and are concerned that they might be used as an excuse to maintain or create trade barriers. The involvement of developing countries in EU SIAs might help to build trust and ownership in the assessments outside the EU as well as enrich the design of assessment processes. Benefits and costs should be compared as involving more participants would invariably complicate and potentially slow proceedings. The European Commission might be concerned that its own position in negotiations may be weakened by involving trading partners and third countries. According to the confidentiality principle of the EU's negotiation strategy,

its positions should not be revealed to its partners. This might be undermined by overly close cooperation with trading partners on SIAs (European Commission 2002c). One way to avoid these problems would be for every country taking part in the negotiations or likely to be affected by their outcomes to undertake its own impact assessment to inform its negotiating position (George, Nafti and Curran 2001). Since most mitigating measures will require national policy measures, national SIAs could have practical advantages for implementation.

NGOs have been requesting that the European Commission provide support to developing countries to carry out their own SIAs (European Commission 2000). Splitting the SIAs up into national studies in the first place and then possibly sharing experiences and results afterwards might be an alternative to decentralizing a single comprehensive SIA integrating a range of countries.

Structuring Participation

At present, the consultation process with civil society on the European Commission's SIAs consists mainly of the publication of reports and other material on websites, the invitation for submission of written comments and inputs from stakeholders as well as open public meetings. Additionally, an international network of experts continues to be maintained and extended (Kirkpatrick et al. 2002). In some cases, developing-country experts are called upon to provide specific input to country case studies, for example in the SIA of the EU–Chile negotiations (Planistat 2002). Generally however, the participation process does not seem to be subject to qualitative or quantitative change during the course of an assessment, although the stages of SIAs are different in character. Accordingly, different kinds of expertise may become relevant at the different stages, by splitting the consultation process up into components that reflect the evolution of the assessment. Against this background, the organization of a larger number of smaller meetings during the course of an assessment would allow for more focussed discussion on the issues at stake during a certain phase. Central meetings could also be broken-up into working groups or round tables focussing on individual issues..

During the planning stage, the group of participants depends mainly on the convening institution, whose concerns are addressed by the SIA. However, the participation of stakeholders in the definition of the contents increases the probability that the assessment will address questions relevant to them (Eckley 2001, pp. 8–9). In the current debate about how and by whom the contents of SIAs should be determined, the European Commission clearly states that it reserves the right to decide on the contents of the SIA study and potential scenarios (European Commission 2003). Its objective in conducting SIA studies is to inform negotiators of the possible range of impacts of a trade agreement within the framework of the negotiating mandate. However, if the concerns of civil society groups are to be integrated in the SIA process, it is essential for such groups to participate from the very beginning so that they will be able to influence the terms of reference for the SIA. In addition, the participation of experts might help with choosing the topics and methods to be used in the assessment.

Most of the decisions made in the scoping phase, such as the choice of indicators and significance criteria for the comparison, are not of a only technical nature, but also have political effects (Cash and Clark 2001, pp. 9–10). Thus, to ensure legitimacy and transparency of SIAs, NGOs and other interest groups need to be consulted during this phase. When the final decision is made by the Commission and its contractors, adequate feedback should be provided, stating why indicators were eventually chosen or excluded. Similarly, the selection of individual countries for case studies may constitute politically sensitive judgements and should be conducted with the participation of stakeholders.

In the actual detailed assessment, including the design and the treatment of modeling, peer review by experts is necessary in order to enhance the scientific quality of the study (Eckley 2001, p. 7). If possible, local research institutions and country experts should be involved in regional and sector studies. This principle was applied in the EU–Chile SIA study, which involved researchers at Chilean universities (European Commission 2003, p. 50).

The assessment of results of the SIA and the decisions about which mitigation and enhancing measures should be included are again specifically political questions. The criteria for adoption or exclusion of measures, such as their impact on sustainable development, their cost effectiveness and their feasibility (Kirkpatrick 2002), as well as their prioritization, should therefore be discussed with a wide range of interest groups and experts.

Drawbacks associated with structuring the participation process in this way include a significant increase in the workload for the Commission and its contractors due to the increased number of meetings as well as the fact that there might be too much of an overlap between the stakeholder groups participating in the different meetings, reducing efficiency. Moreover, whether there is sufficient interest and resources among stakeholders to guarantee that all meetings have a satisfactory attendance needs to be clarified in advance. Another question is whether some participants should be excluded from certain meetings, or if all meetings should be open to everyone in principle. If certain parties are to be excluded, it will be essential for this to be done in a transparent manner.

A new Decentralization Approach?

The implementation of SIAs is currently highly centralized. In the European Union, the main workload and responsibility lies with one consultant (or with a consortium of consultants) contracted by the European Commission.

An alternative approach to the present practice of impact assessments would be the decentralization of the assessment process as well as the of change institutional structures. This, for example, was suggested as part of the Global Environmental Assessment Project at Harvard University, which developed the idea of "distributed assessment systems" (Cash 2000, p. 1). The underlying idea is that national and international institutions have the resources and capacity to carry out modeling studies, while research on a regional or local scale might be more appropriate for

assembling local-specific data. Consequently, complementary advantages at each level should be integrated through an institutionalized system of multiple linkages. Scientific efforts on different levels and with different specializations and capacities would be coordinated, and links to decision-makers institutionalized across levels. This approach reflects the complex multi-level nature of trade impacts on sustainable development, and the need to assess both large-scale dynamics and their local implications. Moreover, a network of semi-autonomous research nodes would allow the integration of differing assessment abilities and activities (Cash and Clark 2001, pp. 11–12).

A major practical obstacle to a decentralization of the European Commission's SIA efforts will certainly be time limits imposed by the negotiations themselves. To develop a well-functioning distribution system with reliable links and coordination between actors would be a lengthy process. This is a serious limitation, given the need for trade negotiation SIAs to start early enough and be completed in time to inform negotiators. Nevertheless, the European Commission could adopt elements of this approach in the near future in order to decentralize its assessment system to some degree. For example, individual sectoral or regional studies could be delegated to research institutions based in the respective region, or projects could be given to larger consortia.

Data in differing formats may slow the integration of multiple research centers into common projects early on. . However, if cooperation is established and institutionalized, it might lead to a harmonization of data collection and methods in the long run. One step in this direction might be to include the trading partners, or even developing countries, in the SIA processes. Thus, studies could be carried out only in cooperation with research institutions in the trading partners' countries. Such a procedure could leave more room for "thinking outside the box" within SIA studies and for considering a broader range of scenarios, thus maintaining more options for innovative solutions.

With respect to public participation, it seems that decentralization of the SIA process could contribute to improving public participation in general. The number of potential entry points for civil society contributions would be increased by the division of the research tasks among multiple research institutes or agencies on various levels. . Participation by local groups could be significantly fostered if local institutes were carrying out research on problems directly affecting the region. However, the costs of participation and the scarcity of resources available in civil society should not be overlooked. Thus, it should be kept in mind that with regards to participation efforts, a balance has to be found between the amount of time and resources invested in participation in SIAs and the actual impact such assessment have on the trade negotiations.

Conclusion

Given the financial and time resources required for participation, and the existing doubts about the effectiveness of SIAs in civil society, it is crucial to further clarify the role, opportunities and limits of SIAs in the trade negotiation process. As the

impact assessments only indirectly feed into the negotiation process, civil society will only be willing to spend time and to provide knowledge to the process if the results and effects of their participation become more accessible. A first step in this direction would be to provide detailed written feedback about how the input of civil societies was incorporated into the final SIA, and how the SIA contributed to the negotiation process and its outcome.

Public participation in SIAs includes a number of traditional effectiveness questions that need to be addressed. It is crucial that experts, communities and NGOs affected by the trade agreements be properly involved in the impact assessment. Therefore, how criteria could be defined for the selection of participants in order to ensure a balanced representation of civil society, and what means could be used to encourage participation by a wider range of stakeholders, should be assessed more deeply. This underlines the importance of capacity building and financial support. Given the distinct phases within SIAs, to better match participation in each phase with the respective needs and objectives, a scheme should be elaborated, eventually leading to more effective and efficient processes for involving participation at different stages of the SIA process.

The inclusion of trading partners, developing countries and their respective civil societies will enhance SIA quality. Involvement broadens the knowledge base of decision-makers and facilitates implementation

Decentralization of the SIA process itself offers an opportunity to more effectively integrate a more of voices and views into the impact assessment. A decentralized system would allow for more research and civil society input. In addition, a system consisting of a larger number of actors could prove to be more flexible in adapting participatory approaches to requirements that arise during the negotiation process.

In conclusion, it is important to recall that SIAs are relatively new, and are thus still represent an evolving tool. SIAs have the potential to play an important role in trade policy making as well as to render trade agreements and sustainable development mutually supportive. Public participation could increase the knowledge base, as well as build on the legitimacy of trade policy, thus facilitating implementation. Moreover, based on a more decentralized system, SIAs would aid in tailoring trade agreements to local requirements. While the current practice is certainly a step forward, there are still significant opportunities for improvement.

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